

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

_____)	
Application of)	
)	
ALBAWINGS sh.p.k.)	
)	Docket DOT-OST-2022-0068
for a foreign air carrier permit)	
pursuant to 49 U.S.C. § 41301 and)	
an exemption pursuant to 49 U.S.C. § 40109)	
_____)	

**MOTION OF ALBAWINGS SH.P.K.
FOR CONFIDENTIAL TREATMENT**

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Counsel for Albawings sh.p.k.

DATED: June 14, 2022

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Albawings sh.p.k (“Albawings Airlines” or “Albawings”), pursuant to Rule 12 of the Department’s Rules of Practice, 14 C.F.R. § 302.12, hereby moves that the Department withhold from public disclosure certain proprietary and commercially sensitive confidential information that Albawings is submitting under seal in support of its concurrently-filed Application for a Foreign Air Carrier Permit and Exemption. The confidential documents are identified and described in the attached Index A.

I. The Confidential Information Is Protected From Public Disclosure Under The Freedom Of Information Act.

The confidential information being submitted by Albawings is protected from public disclosure under various exemptions in the Freedom of Information Act, including 5 U.S.C. § 552(b)(3) and 5 U.S.C. § 552(b)(4). Exemption (4) exempts from public disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4). This exemption has been construed to prevent public disclosure of information that is not the type usually released to the public, and that if released would cause substantial harm to the competitive position of the person from whom the information was

obtained. *See e.g.*, Gulf & Western Industries, Inc. v. United States, 615 F.2d 527, 530 (D.C. Cir. 1980); American Airlines, Inc. v. NMB, 588 F.2d 863, 871 (2d Cir. 1978); National Parks & Conservation Ass'n v. Kieppe, 547 F.2d 673, 684 (D.C. Cir. 1976); Joint Application of Delta and Virgin Atlantic, Order 94-5-42, May 28 1994; Joint Application of United and Lufthansa, Order 93-12-32, December 18, 1993; Joint Application of Northwest and KLM, Order 93-1-11, January 8, 1993, p. 19; Information Directives Concerning CRS, Order 88-5-46, May 22, 1988; Carrier-Owned Computer Reservations Systems, ER-1385, Order 86-5-54, May 19, 1986; Information Directives Concerning CRS, Order 83-12- 136, December 29, 1983. The purpose of these exemptions “is to protect the confidentiality of information which citizens provide to their government, but which would customarily not be released to the public, and to facilitate citizens’ ability to confide in their government.” Burke Energy Corp. v. DOE, 583 F. Supp. 507, 510 (D. Kan. 1984).

For information to qualify for exemption (4), the information must be (1) commercial or financial in nature, (2) obtained from a person, and (3) privileged or confidential. *See* Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1290 (D.C. Cir. 1983). All of the confidential information being submitted by Albawings satisfies this three-part test.

First, the confidential information is commercial or financial in nature in that it relates to commercially sensitive, proprietary, and privileged corporate information. This type of confidential information is proprietary and commercially sensitive, and would not otherwise be made public. It is being submitted to the Department so that the Department can expeditiously evaluate whether Albawings is fit to provide foreign air transportation. Second, the information has been “obtained from a person” within the meaning of exemption (4). Third, the information is “confidential.” This confidential information is not available to the public, and its public

disclosure is not required to further the public interest or to promote competition. In National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974), the Court held that information is “confidential” for purposes of exemption (4) if it would not customarily be released to the public by the person from whom it was obtained, and if disclosure is likely to have either of the following results: “(1) to impair the Government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” Albawings respectfully submits that public disclosure of the type of confidential information at issue here would cause substantial harm to its competitive position, and could impair the government’s ability to obtain similar information on a voluntary basis from individuals in the future.

In order to minimize the risk of harmful disclosure of this competitively sensitive information, access should be strictly limited, as requested. Albawings is filing, concurrently with this motion, copies of this information labeled “Confidential Treatment Requested Under §302.12.”

WHEREFORE, Albawings respectfully requests that the Department grant this motion to withhold proprietary and commercially sensitive confidential information from public disclosure, as described above.

Respectfully submitted,



Evelyn D. Sahr
Drew M. Derco
Eric A. Felland

Counsel for Albawings sh.p.k.

DATED: June 14, 2022

INDEX A

Index of documents for which confidential treatment is sought:

Title/Description	Location in Document
Financial Data	Exhibit 6 to Albawings' Application for a Foreign Air Carrier Permit and Exemption
Estimate of total traffic and financial results of intended service	Exhibit 7 to Albawings' Application for a Foreign Air Carrier Permit and Exemption